In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-845

ADOLPH COORS COMPANY,
PETITIONER

v.

UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 17-19) is reported at 464 F.2d 1270. The opinion of the district court (Pet. App. 26-31) is reported at 320 F.Supp. 1025.

JURISDICTION

The judgment of the court of appeals was entered on August 7, 1972, and a petition for rehearing was denied on October 4, 1972. The petition for a writ of certiorari was filed on December 7, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a Commissioner's charge stating that there was reasonable cause to believe that petitioner discriminated against members of certain minority groups on the basis of race and national origin by refusing to recruit and hire such persons was an adequate basis for an administrative investigation of petitioner's recruitment and hiring practices under Title VII of the Civil Rights Act of 1964.

STATUTE INVOLVED

The relevant provisions of Title VII of the Civil Rights Act of 1964 in effect at the time this proceeding was instituted, 42 U.S.C. 2000e *et seq.*, and as subsequently amended, P.L. 92-261, 86 Stat. 103 (March 24, 1972), are set forth in the Appendix to this brief.

STATEMENT

On February 24, 1969, Commissioner Vicente T. Ximenes of the Equal Employment Opportunity Commission filed with the Commission a charge of discrimination (Pet. App. 27) stating that he had reasonable cause to believe that petitioner was violating Title VII of the Civil Rights Act of 1964 by—

> discriminating against Negroes, American Indians, and Spanish Surnamed Americans on the basis of race or national origin, respectively, with respect to recruitment and hiring, in that [petitioner] discriminatorily fails or refuses to recruit or hire Negroes, American Indians, or Spanish Surnamed Americans in the same manner as it recruits and hires others.

Pursuant to Section 706(a) of Title VII [1] the Commission proceeded to investigate the charge. After petitioner refused to provide the information requested, the Commission, on August 1, 1969, issued a formal demand for access (Pet. App. 28-29).

Petitioner then instituted the present suit under Section 710(c),[2] seeking to set aside the Commission's demand on the ground that it was based on a charge that did not set forth sufficient facts to comply with Section 706(a) (Pet. App. 30).

The district court, holding that the Commissioner's charge was inadequate under Section 706(a), set aside the Commission's demand (Pet. App. 26-31). The court of appeals reversed, relying upon its earlier *en banc* decision in *Sparton Southwest, Inc.* v. *Equal Employment Opportunity Commission,* 461 F.2d 1055 (C.A. 10) (Pet. App. 20-25), which held that a Commissioner's charge need only describe generally the unlawful practices alleged since otherwise a charge would be held to "a standard even more strict than that required by our Rules of Civil Procedure, notwithstanding that the pleadings are even less significant in the administrative process than in the judicial" (Pet. App. 23).

ARGUMENT

Prior to the 1972 amendments to Title VII, Section 706(a), 42 U.S.C. 2000e-5(a), provided:

---

[1] 42 U.S.C. 2000e-5(a) prior to the 1972 amendments; now Section 706(b) of the amended Title.

[2] 42 U.S.C. 2000e-9(c). This provision has been modified by the 1972 amendments, but the modifications are not relevant to this case.

> Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (*and such charge sets forth the facts upon which it is based*) that an employer * * * has engaged in an unlawful employment practice, the Commission shall * * * make an investigation of such charge * * *. [Emphasis supplied.]

Petitioner relies upon the parenthetical language of former Section 706 (a), which was deleted in the 1972 amendments to Title VII,[3] to support its argument that the charge in the instant case was deficient.

That language had uniformly been construed to require only "a sufficient allegation to give the EEOC notice of what it is to investigate and put the respondent

---

[3] Section 706(b), as amended by P.L. 92-261, 86 Stat. 103, 104 (March 24, 1972), now provides:

> Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer * * * has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer * * * and shall make an investigation thereof. *Charges* shall be in writing under oath or affirmation and *shall contain such information and be in such form as the Commission requires.* [Emphasis supplied.]

The Commission requires only that a charge be "a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of." 29 C.F.R. 1601.11(b), 37 Fed. Reg. 9215 (May 6, 1972). See also 29 C.F.R. 1601.11(b), 31 Fed. Reg. 10269 (July 29, 1966).

on notice of the practice or violation with which it is charged." *Graniteville Co.* v. *Equal Employment Opportunity Commission*, 438 F.2d 32, 38 (C.A. 4); accord *Bowaters Southern Paper Corp.* v. *Equal Employment Opportunity Commission*, 428 F.2d 799 (C.A. 6), certiorari denied, 400 U.S. 942; *Local No. 104, Sheet Metal Workers* v. *Equal Employment Opportunity Commission*, 439 F.2d 237 (C.A. 9); *General Employment Enterprises, Inc.* v. *Equal Employment Opportunity Commission*, 440 F.2d 783 (C.A. 7); *Sparton Southwest, Inc.* v. *Equal Employment Opportunity Commission*, 461 F.2d 1055 (C.A. 10). These decisions recognize that the primary purpose of a charge, whether filed by a private person or by a Commissioner, is simply to provide the full Commission with sufficient information to commence an investigation. *Jenkins* v. *United Gas Corp.*, 400 F.2d 28, 30 n.3 (C.A. 5). As the Tenth Circuit noted in *Sparton Southwest, supra*, it would be anomalous to require more specificity in a charge that merely institutes an investigation limited to finding reasonable cause than is required in a court action that seeks a judgment on the merits (Pet. App. 23). See also *Local No. 104, Sheet Metal Workers* v. *Equal Employment Opportunity Commission, supra*, 439 F.2d at 242.[4]

In the present case the Commissioner's charge provided sufficient notice to both the Commission and

---

[4] The standard of notice held applicable to charges under Title VII is similar to that governing the sufficiency of administrative pleadings before other federal agencies. See, *e.g.*, *National Labor Relations Board* v. *Industrial Union of Marine & Shipbuilding Workers*, 391 U.S. 418; *National Labor Relations Board* v. *Fant Milling Co.*, 360 U.S. 301.

petitioner. It alleged that the petitioner refuses to recruit, or to hire, Negroes, Spanish-surnamed Americans, and Indians in the same way that it recruits and hires others. Such allegations state a violation of Title VII. See, *e.g.*, *Parham* v. *Southwestern Bell Telephone Co.*, 433 F.2d 421 (C.A. 8); *Lea* v. *Cone Mills Corp.*, 438 F.2d 86 (C.A. 4), affirming 301 F.Supp. 97 (M.D.N.C.). The court below correctly found the allegations to be sufficient to perform the function of giving notice of the practices to be investigated.

In any event, the issue presented here, which involves interpretation of statutory language, has no future significance in view of the deletion of that language in the 1972 amendments to Title VII (see note 3, *supra*).

CONCLUSION

It is respectfully submitted that the petition for writ of certiorari should therefore be denied.

ERWIN N. GRISWOLD,
Solicitor General.
DAVID L. NORMAN,
Assistant Attorney General.

WILLIAM A. CAREY,
General Counsel,

JULIA P. COOPER,
Associate General Counsel,

BEATRICE ROSENBERG,
CHARLES L. REISCHEL,
Attorneys,
Equal Employment Opportunity Commission.

JANUARY 1973.

APPENDIX

Section 706(a) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(a), provides:

> (a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall

be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

Section 706(b) of Title VII of the Civil Rights Act of 1964, as amended, P.L. 92-261, 86 Stat. 103, 104 (March 24, 1972), provides:

> (b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission

shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

☆ U.S. Government Printing Office: 1973—492-474/428